



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Release Date: 6/18/2010

Date: March 26, 2010

UIL: 4945.04-04

Contact Person:

Contact's Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

X =

Dear _____ :

This is in response to your ruling request for advance approval of your employer-related scholarship grants under section 4945(g)(1) of the Internal Revenue Code ("Code") and Revenue Procedure 76-47, 1976-2 C.B. 670.

Facts

You are exempt from federal income tax under section 501(c)(3) of the Code and are classified as a private foundation under section 509(a). Your scholarship grant program is designed to provide scholarships to individual students and gives preference to employees and their families of your corporate trustee and any affiliated companies. Academic scores on nationally recognized college entrance examinations and academic records are the basis for your scholarships.

Your trustee shall annually designate a selection committee whose members may not be connected with or employed by your trustee (aside from being on the selection committee) who shall annually determine the beneficiaries on whose behalf scholarships may be awarded to one or more institutions described below. The institution shall be a college or university created or organized in the United States, any state or territory, or the District of Columbia, which is organized and operated exclusively for educational purposes, which is accredited by a nationally recognized accreditation agency, which normally maintains a regular faculty and curriculum and has a regularly organized body of students in attendance at the place where the educational activities are carried on, and to which contributions are deductible under section 170(b)(1)(A)(vi) of the Code. The selection committee shall consist of guidance counselors from each of the three high schools located in X who otherwise meet the requirements of the guidelines. Funds will be paid directly to the grantees' educational institutions and adequate records of applications and grantees will be kept. You represent that no grants will be made to disqualified persons under section 4946 or to members or relatives of the selection committee.

You have represented that your employer-related scholarship grant-making procedures will be conducted within all of the guidelines for employer-related programs as described in Revenue Procedure 76-47, discussed below.

Ruling Requested

You have requested advance approval under section 4945(g) of the Code of the procedures proposed to be employed by you in making scholarship grants to individuals.

Law

Section 4945(a) of the Code imposes an excise tax on a private foundation's making of any "taxable expenditure" as defined, in pertinent part, by sections 4945(d)(3) and 4945(d)(5).

Section 4945(d)(3) of the Code provides that a taxable expenditure includes an amount paid by a private foundation as a grant to an individual for study or other similar purposes by such individual, unless the grant meets the requirements under section 4945(g).

Section 4945(g)(1) of the Code provides that a taxable expenditure under section 4945(d)(3) does not include any grant to an individual for study if the grant is made under a procedure approved in advance, constitutes a scholarship under section 117(a) of the Code (as in effect on the day before the Tax Reform Act of 1986), and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Section 53.4945-4(b) of the Foundation and Similar Excise Taxes Regulations ("regulations") requires that grantees under section 4945(g) of the Code must be selected on an objective and non-discriminatory basis. The group of eligible grantees must be broad enough to enable the giving of the grants to achieve an exempt purpose. The criteria for selection of grantees must be related to the exempt purpose of the grant. The persons selecting the grantees must not be in a position to derive a private benefit, directly or indirectly, if certain potential grantees are selected over others.

Section 53.4945-4(c)(2) of the regulations provides that, at least once per year, the private foundation must obtain a report, verified by the educational institution, on the grantee's progress for each academic period.

Section 53.4945-4(c)(4) of the regulations provides that, if grantee reports submitted or other information, including failure to submit reports, indicate that any part of a grant is not being used for purposes of the grant, the grantor foundation is under a duty to investigate and, while conducting its investigation, must withhold further payments. The grantor foundation's reasonable steps to recover misused grant funds must include legal action where appropriate, unless legal action would not, in all probability, result in satisfaction of execution on the judgment.

Section 53.4945-4(c)(5) of the regulations provides that the duty to supervise under section 53.4945-4(c)(2) and the duty to investigate under section 53.4945-4(c)(4) can also be met if the grantor pays the scholarship grant under section 4945(g)(1) of the Code to the grantee's educational institution which agrees to use the grant funds only if the grantee is enrolled at such educational institution and the grantee's standing is consistent with the purposes and conditions of the grant.

Section 53.4945-4(c)(6) of the regulations provides that the grantor private foundation must retain adequate records on all of its grants to individuals for study or similar purposes under section 4945(d)(3) of the Code. Such records include: all information the foundation secures to evaluate the qualifications of potential grantees; identification of all grantees (including any relationship of a grantee to the grantor foundation sufficient to determine if such grantee is a disqualified person under section 4946); specification of the amount and purpose of each grant; and the follow-up information which the grantor obtains from the grantees under sections 53.4945-4(c)(2) and 53.4945-4(c)(4) of the regulations, cited above.

Section 53.4945-4(d)(3) of the regulations provides that if, by the 45th day after a request for approval of grant procedures has been properly submitted to the Internal Revenue Service, the private foundation has not been notified that its grant-making procedures are not acceptable, its grant-making procedures shall be considered as approved from the date of submission of its request for approval until receipt of actual notice from the Internal Revenue Service that such procedures do not meet the requirements of section 4945(g) of the Code.

Revenue Procedure 76-47, 1976-2 C.B. 670, provides guidelines for determining whether a grant made by a private foundation under an employer-related grant program to an employee or to a child of an employee of the particular employer is a scholarship under sections 117 and 4945(g)(1) of the Code, rather than a form of compensation, an employment incentive, or an employee fringe benefit. This Revenue Procedure sets forth eight guidelines to ensure that a private foundation's employer-related scholarship program for children of employees of a company is operated in accordance with sections 4945(g)(1) and 117 of the Code.

1. The scholarship program must not be used to serve the employer or the private foundation as an employment or recruitment inducement.
2. Grant recipients must be selected by persons who are totally independent (except for participation on the selection committee) of the private foundation, its organizer, and the employer concerned. The number of grantees may not be increased from the number recommended by the selection committee.
3. Eligible applicants to be considered by the independent selection committee must be persons who meet the standards for the grants and who can reasonably be expected to use the grant if selected. Eligibility for a grant cannot be conditioned on any more than three years of employment.
4. Grantees must be selected by objective standards unrelated to the employer's business.
5. Renewal of a grant must not be denied because any person is no longer employed with the employer.
6. Grantees must not be limited to courses that serve to benefit the employer or the foundation.
7. The grants must be consistent with enabling the recipients to obtain an education in their individual capacities solely for their personal benefit, and must not include any understandings suggesting that the studies are for the benefit of any purpose of the employer or foundation.

8. Under the percentage tests for grants to children of employees, the annual number of grants must not exceed 25 percent of the number of employees' children who were eligible, were applicants for such grants, and were considered by the selection committee in that year.

Alternatively, the annual number of grants must not exceed 10 percent of the number of employees' children who can be shown to be eligible for such grants in that year whether or not they submitted an application.

For purposes of these percentage tests, renewals of grants awarded in prior years are not considered in determining the number of grants awarded in a current year.

Compliance with the percentage tests must be in the aggregate with respect to any other scholarship programs made available by the employer or foundation to the same eligible individuals.

Analysis

Based on your Amendment and Restatement of Trust, your Guidelines, and the facts you have represented, your employer-related scholarship grant program satisfies the requirements of Revenue Procedure 76-47 and section 4945(g)(1) of the Code. Your grant program, in accordance with Revenue Procedure 76-47, sections 4.01 and 4.05, will not be used to serve the purposes of the employer or the grantor private foundation, and existing scholarships will be unaffected by whether any employee continues to be employed with the employer.

Your selection committee will be unrelated to, and independent of, the employer; it will select eligible applicants on an objective and nondiscriminatory basis; and it will investigate and ensure that grants are being used for the purposes of the grants; and will take reasonable steps to recover misused scholarship grants. This is in conformance with the requirements of Revenue Procedure 76-47, sections 4.01 and 4.04, and sections 53.4945-4(b) and 53.4945-4(c) of the regulations.

As provided in section 53.4945-4(c)(5) of the regulations, you will pay grants directly to the educational institution described in section 170(b)(1)(A)(ii) of the Code to defray a grantee's eligible expenses only if the grantee is enrolled at such institution and the grantee's standing is consistent with the purposes and conditions of the grant.

The scholarship grants you pay in accordance with these procedures, after the date of your request for approval, will not be "taxable expenditures" within the meaning of section 4945(d)(3).

Conclusion

Your procedures in awarding scholarship grants, which are subject to section 117 of the Code and are to be used at an educational institution described in section 170(b)(1)(A)(ii), comply with section 4945(g)(1) of the Code and, therefore, scholarships granted according to your procedures after the date of your request for approval will not be "taxable expenditures" within the meaning of section 4945(d)(3), and will be eligible for the exclusion from income under section 117 of the Code to the extent that such grants are actually used for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code.

This ruling is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be made to your organization's creators, officers, directors, trustees, or members of the selection committee, or for a purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

This approval of your grant-making procedures is a one-time approval of your system of standards and procedures for selecting recipients of grants that meets the requirements of section 4945(g)(1) of the Code. Thus, approval will apply to succeeding grant programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in this request.

Any funds you distribute to individuals must be made on a true charitable basis in furtherance of the purposes for which you are organized. Therefore, you should maintain adequate records and case histories so that any or all grant distributions can be substantiated upon request by the Internal Revenue Service.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions, which we intend to make available for public inspection, is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

Because this ruling letter could help to resolve any questions about your status, please keep it in your permanent records.

This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure: Notice 437